

25th October 1999

By Fax : 2877 5029

Ms. Anita Ho
Assistant Legal Advisor II
for Arbitration (Amendment) Bill 1999

Dear Ms. Ho,

Re: Arbitration (Amendment) Bill 1999

Having met a deputation of arbitration practitioners, I would like to put forward the following proposed amendments to the Bill to the Administration:

1. Add the words "or of the arbitration proceedings" to the proposed section 40E(2)(c) after "the appointment of the arbitrator":

This is consistent with the MOU between the SAR and mainland authorities, is in s.44(2)(c) of the present Ordinance, and will avoid uncertainty created by the omission which may be seen as purposive.

2. Add the words "and published in the Government Gazette from time to time" to Clause 3:

Practitioners consider the public will be greatly assisted if the list of recognized Mainland arbitral authorities is made known, and publication in the Gazette is the most convenient way of doing so.

3. Binding force of the Ordinance:

Section 47 of the Ordinance provides that the Ordinance (other than Parts III and IV) binds the Government. Under Clause 9, this is repealed and is substituted by a new section 47 which does not expressly provide that the "State" or otherwise the Government is bound. By operation of s.66 of Cap.1 the "State" including the Government is presumed not to be bound. Please explain whether it is intended that the Government / State will in fact be bound, and if not, why not.

4. Application of section 2GG in the light of Ng Fong Hong Ltd v ABC (1998) 1 HKC 213:

It is important that s.2GG should apply to both arbitration made in or outside Hong Kong. After the judgment of Findlay J. in the case referred to hereinabove this is in doubt. Please clarify whether 2GG would be amended to remove the doubt.

5. Substituting "pending" for "has been made" in the new 40C(1) under Clause 5:

If the intention is that enforcement in Hong Kong of a mainland award is not permitted while enforcement proceedings are going on in the Mainland, it is suggested that an amendment as captioned hereinabove would bring greater certainty. Hong Kong has already suffered much due to the absence of arrangements for mutual enforcement of arbitral awards with the Mainland. In the interest of the earliest possible enactment of the Bill in a form and language that will work in the public interest. I should be grateful if the Administration could be urged to consider the above so that a response could be received in time for the first meeting of the Bills Committee on 9 November, 1999.

Yours sincerely,

Margaret Ng